CF0000147286

D.B. civil

COURT FEE 20 Rs. भारत INDIA बीस रुपये TWENTY RUPEES

COURT FEE 5 Rs. भारत INDIA पांच रुपये FIVE RUPEES

2

IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

Misc. Petition No. 47 /89

" Ashanand Wadhwani,
s/o late Shri Harpal Das Wadhwani,
aged about 64 years,
Sole Proprietor of Firm Shanker Dal Mill,
Bhatarapara,
Distt-Raipur(M.P.)."

RESPONDENTS

1. Krishi Upaj Mandi Samiti
thro' The Secretary,
Bhatapara, Raipur, M.P.

2. Director of Mandi,
Krishi Upaj Mandi Sahkari
Bhawan, Bhopal

PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक W.P...3867/89..... **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	25.8.2005	

Smt. Anju Ahuja, Advocate for the petitioner.

Shri H.B. Agarwal, Sr. Advocate with Shri Pankaj Agarwal, Advocate for the respondent.

The petitioner has preferred this petition under Article 226/227 of the Constitution of India questioning the legality, propriety and correctness of demand notice dated 18.10.1986 whereby the Krishi Upaj Mandi Samiti, Bhatapara has asked the petitioner to deposit an amount of Rs.93,059-94 paise being outstanding towards the Mandi fee for the year 1973-74 to 1984-85 and also the appellate order dated 30.6.1989 (Annexure F) whereby the appeal preferred by the petitioner has been dismissed.

The petitioner's case is that the petitioner is engaged in the trade of processing & selling of Dal in the Krishi Upaj Mandi area of Bhatapara. The impugned notice dated 18.10.1986 was issued to the petitioner for making the payment of outstanding fee to the tune of Rs.93,059=94 paise, whereas, the petitioner had already paid the entire Mandi fee, therefore, the assessment made by the respondents is illegally, arbitrary and without any basis. The petitioner's further case is that on payment of Mandi fee the license of the petitioner was renewed from time to time and that assessment having become final the respondents were not entitled to reopen the same and the petitioner is entitled for exemption from the payment of mandi fee under Section 19 (a) of the Act as it stood prior to its amendment by the Amending Act No.24 of 1986. Further case of the petitioner is that by introducing Rules, 1979 the petitioner was required to maintain the accounts in accordance with Form-I prescribed in Rule 3 of all purchase and

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... WP 3847/09 ..... **सन् 200**

2

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	processing done by the processor and under Rule 4, the Processor was required to give a declaration in Form-II in proof of the fact that Mandi fee was paid on the agricultural produce to any other Mandi Samiti and which is used for processing in the Mandi concerned. Under Rule 5, a certificate duly signed by the Secretary of the concerned Mandi, where Manid fee was paid on the raw material was required to be produced along with the declaration in Form-III. The requirement of production of declarations and certificates as prescribed in Form-II & III were impossible to achieve as per normal trade practice in Dal because the raw material is purchased through the Commission Agents, Adhatiyas or Dalals and from Dal market throughout the State. There is no Mandi fee leviable on the retailers under Section 19 of the Adhiniyam. The Mandi fee paid by the wholesale commission agents or traders on the raw materials is in their own names and on payment of such Mandi fee by the suppliers of raw materials, the certificates can be issued only in the name of traders or market functionary paying the Mandi fee. No certificate can either be obtained or issued in favour of the processor claiming exemption from the payment of mandi fee. Since the Mandi fee is paid by the concerned supplier of raw material, it was neither possible for the processor to obtain a certificate in his own name from that concerned Mandi in the prescribed Form-III nor was it possible to give a declaration in its own name in the prescribed Form-II. Further case of the petitioner is that the petitioner has already paid Rs.23,265-/ towards Mandi fee with the Mandi Samiti and therefore, he is entitled for adjustment of that amount. I have heard learned counsel for the parties.	

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक W.P. 3847/89 **सन् 200**

3

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Learned counsel for the petitioner argued that in the first instance, the said Rules came into effect on 20.8.1979 whereby the petitioner was required to furnish the certificate in prescribed Forms 2 & 3 after coming into force of these Rules, whereas, the respondents had reopened the case of the petitioner prior to 1979, which was not permissible under the law. The second ground raised by learned counsel for the petitioner is that as mentioned in Paragraph Nos. 14 to 16 of the petition certain amounts were already deposited by the petitioner even then adjustment of same has not been given to the petitioner. At the same time, counsel for the petitioner argued that the demand notice was issued merely on the basis of record maintained by the Naka, which was existing at the outer limit of Mandi area in which the entries were made about the Dal which was brought by the petitioner in the Mandi area, except this there is no other document which can be made basis for issuance of impugned demand of notice. The petitioner was regularly paying the Mandi fee and therefore, his license was renewed from time to time and the respondents without any basis issued the said demand of notice. She further argued that under Section 61 of the Act there is no provision regarding imposition of interest, whereas, 20% interest has been imposed against the petitioner in an illegal and arbitrary manner.

On the other hand, Shri Agarwal learned Sr. Counsel for the respondents argued that it is evident from the order of appellate authority that the petitioner was given opportunity to produce his ledger account and other documents for proving the fact that how much Dal was sold by him and how much Dal was given back by him after processing without selling the same, but the petitioner was failed to

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ....W.P.S.847/89.... **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -4-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

the chart Annexure R-1 produced by the Mandi Samiti shows that Rs. 28,262=90 paise was paid by the petitioner, whereas, Rs.93,059=94 paise was shown as outstanding against the petitioner. Therefore, apart from the amount, which has been shown by Mandi Samiti in Annexure R-1, if any other amount is paid by the petitioner then the respondents are directed to adjust the same against the outstanding amount on production of proof of deposit by the petitioner within a period of four weeks from today.

As far as the interest on the outstanding amount is concerned, interest @ 20% has been ordered to be recovered from the petitioner but no basis has been recorded for imposing such a high rate of interest. During that period normal bank interest rate was about 10% and as the amount is outstanding against the petitioner and he has not deposited the same, therefore, in the circumstances, the interest on the outstanding amount is reduced from 20% to 10% i.e. the petitioner is liable to pay 10% interest on the outstanding amount.

As far as the other arguments advanced by learned counsel for the petitioner are concerned, same are without any basis. Perusal of appellate order shows that even the petitioner was allowed to produce the ledger account and other accounts before the Mandi Samiti in order to prove that the Mandi fee was paid by him, but the petitioner was failed to produce any document before the Mandi Samiti, he was also failed to produce the Form II & III and also the certificate of the Secretary, Mandi Samiti regarding payment of Mandi fee, therefore, the decision of Mandi Samiti as well as the appellate authority do not call for any interference by this Court.

In the result, the writ petition is partly allowed, to sum up;

SP/FS/2005 - 20,000

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक WP3847/89 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

(1) respondents are directed to revise the demand notice considering the Mandi fee payable from 20.8.1979 on wards;

(2) respondents should adjust the amount paid by the petitioner apart from the amount shown in Annexure R-1;

(3) respondents should charge interest @ 10% against the outstanding fee arrived at after the deduction of the above amount from the date of its outstanding.

Certified copy as per rules.

Sd/-
L.C. Bhadoo
Judge

SP/FS/2005 - 20,000